IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Shanti Devi Vs. State of Rajasthan
(D.B. CRIMINAL APPEAL NO.239/2003)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 21-1-2003 in Sessions Case No.35/2002 passed by Shri Baldev Ram Chaudhary, RHJS, Additional Sessions Judge (Fast Track) Tonk.

Date of Judgment: March 16, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Kamlakar Sharma, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Shanti Devi, appellant herein, was charged and tried before learned Additional Sessions Judge (Fast Track) Tonk, for having inflicted single blow with blunt side of `Kudali' on the head of Madan (since deceased). Learned Judge convicted the appellant under section 302 IPC and sentenced her to suffer imprisonment for life and fine. Against this finding of conviction and sentence that the present action for filing the appeal has been resorted to by the appellant.

2. Having heard the rival submissions and on scanning the record we notice that as per the testimony of Kali (Pw.4) the deceased after sustaining injury on the head, had gone to his house on foot and thereafter he himself drove motor cycle to the hospital. According to post mortem report (Ex.P-12) the deceased had fracture on right parietal bone and cause of death

as per Dr. Arvind Luniwal (Pw.17), who conducted autopsy on the dead body was haemorrhage shock due to head injury leading to excessive bleeding. In the same incident appellant Shanti Devi also received following injuries (vide Ex.D-9):-

1. Bruise 03cm x 01 cm on Ant.lat. surface of left side of lower chest wall.
2. Bruise 01cm x 1cm just lateral to first bruise.
3. Bruise 3cm x 3cm post lateral surface of left side of lower chest wall.

3. Since the incident occurred all of sudden and on a spur of moment and appellant inflicted only one blow with Kudali from blunt side on the head of deceased and did not repeat the same, it can be inferred that the appellant had knowledge that the blow inflicted by her was likely to cause death of deceased, even though she had no intention of causing death or such bodily injury as is likely to cause death. The appellant thus is found guilty of the offence punishable under Part II of Section 304 IPC.

4. For these reasons, we partly allow the appeal and instead of section 302 we convict the appellant Shanti Devi under section 304 part II IPC. Looking to the fact that the appellant has already undergone confinement for a period more than five years the ends of justice would be met in sentencing her to the period already undergone by her in confinement. The appellant Shanti Devi, who is in jail, shall be set at liberty forthwith, if she is not required to be detained in any other case.

The impugned judgment of learned trial court stands modified as indicated above.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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